

HOUSE FLOOR SUBSTITUTE FOR
HOUSE BILL 225

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO MOTOR VEHICLES; REQUIRING NOTIFICATION OF REPLACED
OR REPURCHASED VEHICLES; PROVIDING QUALITY ASSURANCE STANDARDS
FOR USED MOTOR VEHICLES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 57-16A-2 NMSA 1978 (being Laws 1985,
Chapter 220, Section 2) is amended to read:

"57-16A-2. DEFINITIONS.--As used in the Motor Vehicle
Quality Assurance Act:

A. "collateral charges" means ~~those~~ additional
charges to a consumer not directly attributed to a
manufacturer's suggested retail price label for a new motor
vehicle and includes all taxes, license, title and registration
fees and other governmental charges related to the purchase of
the vehicle;

. 146610. 3

underscored material = new
[bracketed material] = delete

1 B. "comparable motor vehicle" means an identical or
2 reasonably equivalent motor vehicle;

3 C. "consumer" means the purchaser, other than for
4 purposes of resale, of a new or used motor vehicle normally
5 used for personal, family or household purposes, [~~any~~] a person
6 to whom such a motor vehicle has been transferred during the
7 duration of an express warranty applicable to the motor vehicle
8 and any other person entitled by the terms of the warranty to
9 enforce the obligations of the warranty;

10 D. "express warranty" means [~~any~~] a written
11 affirmation of the fact of promise made by a manufacturer to a
12 consumer in connection with the sale of a new or used motor
13 [~~vehicles which~~] vehicle that relates to the nature of the
14 material or workmanship or to a specified level of performance
15 over a specified period of time, including any terms or
16 conditions precedent to the enforcement of obligations pursuant
17 to the warranty;

18 E. "manufacturer" means [~~any~~] a person engaged in
19 the manufacturing, assembling, importing or distributing of a
20 motor vehicle as a regular business; [~~and~~]

21 F. "motor vehicle" means a passenger motor vehicle,
22 including an automobile, pickup truck, motorcycle or van
23 normally used for personal, family or household purposes,
24 [~~which~~] that is sold and registered in this state and whose
25 gross vehicle weight is less than ten thousand pounds;

1 G. "used motor vehicle" means a motor vehicle that
 2 has been sold, bargained or exchanged or a motor vehicle that
 3 is the subject of a title that has been transferred from the
 4 person who first acquired the motor vehicle from the
 5 manufacturer, importer or dealer or agent of the manufacturer
 6 or importer and that has been placed in bona fide consumer use;
 7 and

8 H. "used motor vehicle dealer" means a person or
 9 business that sells or offers for sale a used motor vehicle
 10 after selling or offering for sale four or more used motor
 11 vehicles in the previous twelve months but does not include:

12 (1) a bank or financial institution;

13 (2) an insurance company;

14 (3) a business selling a used motor vehicle to
 15 an employee of the business; or

16 (4) a lessor selling a leased vehicle to the
 17 lessee of the vehicle or to an employee of the lessee of the
 18 vehicle. "

19 Section 2. A new section of the Motor Vehicle Quality
 20 Assurance Act is enacted to read:

21 "[NEW MATERIAL] NOTICE OF REPLACEMENT OR REPURCHASE TO
 22 USED MOTOR VEHICLE DEALERS AND CONSUMERS. --A manufacturer, its
 23 agent, its authorized dealer or a used motor vehicle dealer
 24 that has been ordered by judgment or decree to replace or
 25 repurchase or that has replaced or repurchased a motor vehicle

. 146610. 3

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1 pursuant to the Motor Vehicle Quality Assurance Act shall,
2 before offering the motor vehicle for resale, attach to the
3 motor vehicle written notification indicating that the motor
4 vehicle has been replaced or repurchased. A consumer or a used
5 motor vehicle dealer may bring a cause of action against a
6 person who removes the notification from the motor vehicle,
7 unless the manufacturer, its agent or its authorized dealer or
8 a used motor vehicle dealer, before completion of the sale, has
9 provided the purchaser with written notification by the
10 manufacturer, dealer or agent of the dealer, that the motor
11 vehicle has been replaced or repurchased. "

12 Section 3. A new section of the Motor Vehicle Quality
13 Assurance Act is enacted to read:

14 "[NEW MATERIAL] USED MOTOR VEHICLES. --

15 A. Unless a seller is a used motor vehicle dealer,
16 before the seller attempts to sell a used motor vehicle, the
17 seller shall possess the title to the used motor vehicle and
18 the title shall be in the seller's name.

19 B. Except as otherwise provided in the Motor
20 Vehicle Quality Assurance Act, a used motor vehicle dealer
21 shall not exclude, modify or disclaim the implied warranty of
22 merchantability prescribed in Section 55-2-314 NMSA 1978 or
23 limit the remedies for a breach of the warranty before midnight
24 of the fifteenth calendar day after delivery of a used motor
25 vehicle or until a used motor vehicle is driven five hundred

. 146610. 3

1 miles after delivery, whichever is earlier. In calculating
 2 time under this subsection, a day on which the warranty is
 3 breached and all subsequent days in which the used motor
 4 vehicle fails to conform with the implied warranty of
 5 merchantability are excluded. In calculating distance under
 6 this subsection, the miles driven to obtain or in connection
 7 with the repair, servicing or testing of the used motor vehicle
 8 that fails to conform with the implied warranty of
 9 merchantability are excluded. An attempt to exclude, modify or
 10 disclaim the implied warranty of merchantability or to limit
 11 the remedies for a breach of the warranty in violation of this
 12 subsection renders a purchase agreement voidable at the option
 13 of the purchaser.

14 C. An implied warranty of merchantability is met if
 15 a used motor vehicle functions substantially free of a defect
 16 that significantly limits the use of the used motor vehicle for
 17 the ordinary purpose of transportation on any public highway.
 18 The implied warranty of merchantability expires at midnight of
 19 the fifteenth calendar day after delivery of a used motor
 20 vehicle or until a used motor vehicle is driven five hundred
 21 miles after delivery, whichever is earlier. In calculating
 22 time, a day on which the implied warranty of merchantability is
 23 breached is excluded and all subsequent days in which the used
 24 motor vehicle fails to conform with the warranty are also
 25 excluded. In calculating distance, the miles driven to obtain

. 146610. 3

1 or in connection with the repair, servicing or testing of the
2 used motor vehicle that fails to conform with the implied
3 warranty of merchantability are excluded.

4 D. An implied warranty of merchantability does not
5 extend to damage that occurs after the sale of the used motor
6 vehicle that results from:

- 7 (1) off-road use;
- 8 (2) racing;
- 9 (3) towing;
- 10 (4) abuse;
- 11 (5) misuse;
- 12 (6) neglect;
- 13 (7) failure to perform regular maintenance;

14 and

15 (8) failure to maintain adequate oil, coolant
16 and other required fluids or lubricants.

17 E. If the implied warranty of merchantability
18 described in this section is breached, the consumer shall give
19 reasonable notice to the seller within thirty days of the date
20 of the breach. Before the consumer exercises another remedy
21 pursuant to Chapter 55, Article 2 NMSA 1978, the seller shall
22 have a reasonable opportunity to repair the used motor vehicle.
23 The consumer shall pay one-half of the cost of the first two
24 repairs necessary to bring the used motor vehicle into
25 compliance with the warranty. The payments by the consumer are

1 limited to a maximum payment of twenty-five dollars (\$25.00)
 2 for each repair.

3 F. The maximum liability of a seller pursuant to
 4 this section is limited to the purchase price paid for the used
 5 motor vehicle, to be refunded to the consumer or lender, as
 6 applicable, in exchange for return of the vehicle, unless the
 7 seller knew or should have known of the defect given the
 8 circumstances in which the vehicle was acquired or sold and the
 9 seller did not disclose that defect.

10 G. An agreement for the sale of a used motor
 11 vehicle by a used motor vehicle dealer is voidable at the
 12 option of the consumer unless it contains on its face the
 13 following conspicuous statement printed in boldface, ten-point
 14 or larger type set off from the body of the agreement:

15 "New Mexico law requires that this vehicle will be
 16 fit for the ordinary purposes for which the vehicle
 17 is used for fifteen days or five hundred miles after
 18 delivery, whichever is earlier, except with regard
 19 to particular defects disclosed on the first page of
 20 this agreement. You (the consumer) will have to pay
 21 up to twenty-five dollars (\$25.00) for each of the
 22 first two repairs if the warranty is violated."

23 H. The inclusion in the agreement of the statement
 24 prescribed in Subsection G of this section does not create an
 25 express warranty.

. 146610. 3

1 I. A consumer of a used motor vehicle may waive the
2 implied warranty of merchantability only for a particular
3 defect in the vehicle and only if all of the following
4 conditions are satisfied:

5 (1) the used motor vehicle dealer fully and
6 accurately discloses to the consumer that because of
7 circumstances unusual to the business of the used motor vehicle
8 dealer, the used motor vehicle has a particular defect;

9 (2) the consumer agrees to buy the used motor
10 vehicle after disclosure of the defect; and

11 (3) before the sale, the consumer indicates
12 agreement to the waiver by signing and dating the following
13 conspicuous statement that is printed on the first page of the
14 sales agreement in boldface ten-point or larger type and that
15 is written in the language in which the presentation was made:

16 "Attention consumer: sign here only if the dealer
17 has told you that this vehicle has the following
18 problem(s) and you agree to buy the vehicle on those
19 terms:

- 20 1. _____
21 2. _____
22 3. _____."

23 J. A used motor vehicle dealer has the burden to
24 prove by a preponderance of the evidence that the dealer
25 complied with Subsection I of this section.

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